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IN THE

Supreme Court of the United States

October Term, 1944

No. 30

Isaac J. Collins,

Appellant,

vs.

United States of America,

Appellee.

No. 31

T. C. Fulton, W. V. Fisher and J. D. Dilworth,

Appellants,

vs.

United States of America,

Appellee.

Appeal from the District Court of the United States for the Northern District of Ohio, Western Division.

REPLY BRIEF UPON REARGUMENT OF APPELLANTS ISAAC J. COLLINS, T. C. FULTON, W. V. FISHER AND J. D. DILWORTH

Frank E. Fuller,
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IN THE

Supreme Court of the United States

October Term, 1944

No. 10

ISAAC J. COLLINS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 11

T. C. FULTON, W. V. FISHER AND J. D. DILWORTH,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the District Court of the United States for the Northern District of Ohio, Western Division

REPLY BRIEF UPON REARGUMENT OF APPELLANTS ISAAC J. COLLINS, T. C. FULTON, W. V. FISHER AND J. D. DILWORTH

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REPLY BRIEF UPON REARGUMENT OF APPELLANTS ISAAC J. COLLINS, T. C. FULTON, W. V. FISHER AND J. D. DILWORTH

As in the case of its main brief,[1] the brief of the Government on reargument wholly fails to meet the contentions of these appellants as to

[1]See footnote 1, p. 1, of Collins and Fulton, et al., reply brief.

(a) the complete lack, as a matter of law, of any tenable basis upon which *any* judgment against any of these individual appellants may be rested;[2] and

(b) the utter impropriety of each provision of this particular judgment in so far as these individual appellants are concerned.[3]

Assuming the facts as found by the District Court to be correct, as a matter of law there is no basis upon which ANY judgment against any of these individual Appellants can be rested

The Government correctly states:[4]

"The judgment depends upon the *findings of fact*[5] entered by the District Court."

It states further:[4]

"We assume that for the purposes of the argument on the judgment we are entitled to take the *facts* as found as correct."

It is precisely upon these assumptions that we have predicated the basic position of these appellants with respect to the judgment as to them as outlined above.[2]

That is to say, assuming arguendo the correctness of the findings of fact entered by the District Court (as distinguished from the conclusions of law), and that the same are supported by the evidence, nevertheless since those findings show as to these appellants nothing more than

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[2]See Collins' main brief, pp. 27-44, and Fulton, et al., main brief, pp. 18-23, where each of the findings of fact in anywise pertaining to any of these appellants is analyzed and discussed; see also Collins and Fulton, et al., reply brief, pp. 1-7; joint brief upon reargument, pp. 31-37.

[3]See Collins' main brief, point 3, pp. 44-61; see Fulton, et al., main brief, point 3, pp. 28-30; see joint brief upon reargument, pp. 14-18, 31-36, and the various sections thereof discussing particular provisions of the judgment, pp. 55, 57-63, 77-78, 82, 85, 99-100, 113, 134-137, 139-146, 187, 198, 211 and 222.

[4]Govt. Br., p. 1, for purposes of this argument under the provisions of the order of this court of May 15, 1944.

[5]Unless otherwise indicated, all italics, parentheses, boldfaced type or emphasis incorporated throughout this brief are ours.

(a) the mere ownership by them of an aggregate of about 4½% of the outstanding stock of Hartford[6] and disclose no wrongful acquisition or use of such stock in furtherance of the conspiracy or otherwise, .

(b) that each of them is an officer or director of Anchor Hocking Glass Corporation,[7] which corporation was dismissed below and thereby absolved of any violation of the anti-trust laws, and

(c) that appellant Collins was at one time a director of Hartford, from which position he resigned in 1937, more than two years before this suit was brought, and while such director in 1932 attended a directors' meeting at which as shown by the findings, nothing was "authorized, ordered or done" in anywise wrongful or improper,[8]

such findings are wholly insufficient in law to support *any* judgment against any of these appellants.

The Government erroneously (Br. p. 26) characterizes this proposition as a reargument "of the merits of the findings that they have violated the law." *There are no "findings that" any of these appellants "have violated the law," or that they participated in any of the transactions found to have been in furtherance of the conspiracy or in violation of the law.* Apparently the Government mistakenly fails (footnote 7, p. 11 of its brief upon reargument) to distinguish between findings of fact and conclusions of law. Our position in nowise goes "to the propriety of *findings of fact*" as the Government there indicates. On the contrary, we assume for the purposes of the argument the entire correctness of all *facts* found by the

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[6]Out of several hundred stockholders, Fisher owns 450 shares, or less than 1/10 of 1% of the total shares issued and outstanding, Fulton owns 3600 shares, or about ¾ of 1%, Dilworth owns 8235 shares, or about 1¾%, and Collins owns 10,000 shares or about 2%.

[7]And of its subsidiaries or predecessors. See Collins' main brief, pp. 16-19, pp. 37-40; Fulton, et al., main brief, pp. 13-16; pp. 18-21.

[8]See Collins' main brief, pp. 27-41, Joint Brief on Reargument, pp. 33-34.

court, but contend that since such *facts* as found disclose no conduct on the part of these appellants either in furtherance of the conspiracy, in contravention of the anti-trust laws, or otherwise unlawful, such *findings of fact* are necessarily insufficient in law to support a conclusion that any of them either "was a party to the conspiracy" or "had engaged in some unlawful conduct" and demonstrate the utter impropriety as a matter of law of *any* judgment against any of these appellants.

The Government makes no answer to this basic proposition either in its main brief filed last term, or in its brief on reargument, although at page 26 of its brief upon reargument it cites pages 303-311 of its main brief as if this proposition was there dealt with. As a matter of fact, instead of there controverting this proposition, it seeks to sidestep the same by resting its claim to the contrary *not upon findings of fact* of the court below, but upon numerous *proposed* findings of fact which it requested that the court below enter as to these appellants, *and which the court below flatly refused to do.*[9]

The Government has not pointed out any Finding of Fact sustaining any of the provisions of the judgment as to any of these Appellants

As noted *supra,*[1] the Government concedes that the propriety of the various provisions of the judgment depends upon the findings of fact entered by the District Court. It follows that the propriety of each provision of the judgment must be so measured as to each appellant.

The Government recognizes that this is true, for in its brief on reargument it meticulously documents each paragraph of the judgment by a citation of the exact findings of

[9]See reply brief of these appellants, pp. 1-20.
[1]P. 2.

fact upon which it claims each of such paragraphs is rested.[2]

Not a single finding of fact having even the slightest reference to any of these appellants is so much as cited.

As a matter of fact, the only reference to any of these appellants throughout the entire 248-page brief consists of exactly four lines.[3]

There are other general references to the "appellants" which the Government may intend to include these four appellants, but never in any instance does the Government in connection with such references mention any finding of fact made as to any of these four appellants.

There is not so much as a single sentence in the Government's entire brief purporting to advance even so much as a single reason why it is claimed that any one of the terms or provisions of this judgment is necessary in so far as any of these appellants is concerned.

None of its provisions are claimed to be essential to prevent the resumption of any past or similar conspiratorial acts in which any of these appellants have been found to have been engaged presumably because there are no findings of fact that any of them have ever engaged in any such acts.

Nor is any attempt made to show that any of the provisions of the judgment are essential in order to dissipate the restraints or "to neutralize the power unlawfully obtained as a result of the monopolization,"[4] although as we read the decisions of this court, the various provisions of the judgment are to be measured by precisely these standards, as the Government itself admits.[4]

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[2]For example, see Govt. Br., p. 55, p. 61, etc.

[3]Govt. Br., p. 26. Not even there is there a citation to a single finding of fact claimed by the Government to warrant any judgment against any of these appellants or to support any conclusion of law "that they have violated the law."

[4]Govt. Br., p. 6. As noted *supra*, there are no findings of fact which would support any such claim if it were made.

At pages 14-15 of its instant brief the Government makes the wholly unsupported generalization that "it is appropriate that all of the provisions" of the judgment "apply to each of * * * *the individual defendants who guided the corporations in their unlawful activities.*" Even if correct, which it is not, this has no application to any of these appellants, who are neither officers, directors, nor agents of any of the corporate appellants and hence neither now guide, nor are found to have guided any of the corporate appellants in any of their adjudicated unlawful activities, and who obviously are not in a position to guide any of them in the future. On the contrary, the corporation whose activities these appellants have guided is Anchor Hocking Glass Corporation. It was their participation in the management of that corporation which led to their being joined as defendants, and Anchor Hocking Glass Corporation was found by the court below not to have been a party to the unlawful conspiracy, and it was accordingly dismissed and absolved of any violation of the anti-trust laws.[5]

The theory upon which the judgment as to these Appellants is admittedly framed is erroneous

The sole argument in the Government's brief which even attempts to justify the inclusion of these appellants in the terms and provisions of the judgment now made applicable to them is the unsupported claim that they were members of the adjudged conspiracy and that each member of a conspiracy should be enjoined from engaging in each and all of the unlawful acts committed by any and all of the other members of the conspiracy, and any similar acts, irrespective of the individual appellant's participa-

[5]FF 23, 621, 623 and 627; Par. 25 of complaint, R. 8. Collins' main brief, pp. 4-8, point 1, pp. 14-16; Fulton, et al., main brief, pp 4-11; point 1, pp. 13-16.

tion therein, threatened or even *possible* resumption thereof by him, or the necessity of such an injunction as to each of such conspirators in order to dissipate the consequences of the conspiracy or neutralize the power of the monopoly.[1]

It was admittedly upon this erroneous theory that this judgment was framed. The Government states at page 12:

> "The judgment was framed on the assumption that all conspirators were charged with liability for the conspiracy as a whole—that once their connection with the conspiracy was proved they *could*[2] be enjoined from engaging in any of the unlawful acts committed by any of the conspirators."

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[1]Govt. main br., p. 11 *et seq.*; pp. 168-169.

[2]There is no question but that the defendants *"could be"* so enjoined in the sense that a court of equity has the power to require whatever action is reasonably necessary "to dissipate the restraints and prevent evasions." But the breadth of an order is not to be tested by the scope of the court's power. Rather, the test is whether under the circumstances of the particular case such an injunction against a particular defendant is reasonably necessary to wipe out the unlawful restraint of trade and to prevent its recurrence.

The theory upon which the Government admits the instant judgment was framed simply assumes this necessity as to every appellant, wholly without reference to the circumstances of the case as disclosed by the findings of fact. While this is discussed *post*, by way of illustration, if the patent "pool" and the machinery leasing system and other activities of the corporate appellants as found by the court below are held by this court to have been in violation of the anti-trust laws, what is there about those circumstances, which in order "to dissipate the restraints and prevent evasions" or "to neutralize the power of the monopoly" requires that these appellants, none of whom has ever in the course of his entire life ever engaged in the manufacture or distribution of glass making machinery, and none of whom has ever owned a patent or patent application of any kind, shall nevertheless be enjoined from ever in the future engaging in such business, or ever acquiring any such patents or patent applications except on the terms and conditions prescribed for other defendants whose activities in that regard are held to have been in violation of law. The restraints will be dissipated, the evasions prevented, and the "power" resulting from the "monopolization" will be destroyed equally as quickly and effectively by an appropriate judgment which does not include any of these appellants as by one which does.

In other words, in the circumstances of this case as shown by the findings of fact, the inclusion of these appellants in the judgment is entirely unnecessary in order to fully dissipate the consequences of the conspiracy or to neutralize any power obtained through any unlawful monopolization, and none of them has been found to have engaged in any acts or practices which are of such a character as are required to be enjoined in order to preclude their possible revival. It has been squarely held that there is no justification for the issuance of an injunction in such circumstances, since an injunction relates only to the future, and its only purpose and effect in such a case would be to punish for past acts of others.

See *U. S. vs. U. S. Steel Corp.*, 251 U. S. 417, 445 (1920); *Industrial Assn. vs. U. S.*, 268 U. S. 64, 84 (1925); *Standard Oil Co. vs. U. S.*, 283 U. S. 163, 181, *et seq.* (1931); *U. S. vs. Aluminum Co. of America*, 44 Fed. Supp. 97, 215 (1941).

We submit that such a theory is fallacious[2] and involves a fundamental misconception of the controlling principles under which relief is granted pursuant to Section 4 of the Sherman Act as established by the decisions of this court.

This misconception stems from a failure to distinguish between the principles applicable to the determination of the existence of and membership in and civil liability in damages for a conspiracy violative of the anti-trust laws and those applicable to the measurement of the injunctive relief necessary to be granted to effectively "dissipate the restraints and prevent evasions."

At least since 1911, when *Standard Oil Co. vs. U. S.*, 221 U. S. 1, was decided, and probably longer, it has been uniformly recognized that the remedy embodied in the judgment *must not go further than is reasonably required*[3]

(1) to prevent the continuance or resumption in the future by a defendant of acts like those which he is found to have engaged in in the past in violation of the statute, and

(2) such additional relief over and above that, if any, as is necessary to effectually dissipate the consequences of the conspiracy and neutralize the power, if any, which the conspiracy or monopoly has brought about.

In so far as the suppression and prevention of resumption of past unlawful practices is concerned, this court has recently held that the injunction should extend only to such unlawful acts as the defendant has been found to have committed or acts of that same type or class "whose commission in the future unless enjoined, may fairly be anticipated from the defendant's conduct in the past." *Labor Board vs. Express Publishing Co.*, 312 U. S. 426, 435.

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[3]See page 78 of opinion. Also at page 6 of its brief after referring to the above passage from the *Standard Oil* case, the Government states, "The judgment is to be tested by that standard."

Thus while a court of equity has a broad discretion in the framing of a judgment "to prevent and restrain" under Section 4 of the Sherman Act, the discretion is neither unlimited nor undefined. The principles governing equitable relief are no different under the Sherman Act than elsewhere.[4] "There is no power, the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or more dangerous in a doubtful case, than the issuing of an injunction."[5]

The necessity that an injunctive provision be shown to be reasonably essential to effectively neutralize or dissipate the consequences of a conspiracy is imperative, lest it be one which by judicial authority merely punishes for past violations or redresses wrong already committed. Hence the greatest of care must be exercised to make certain that an injunction in a given case goes no further than is reasonably necessary to accomplish the two-fold purpose laid down in the *Standard Oil* case.

While "the circumstances of each case control the breadth of the order"[6] this general standard of measurement of the relief to be afforded in an anti-trust judgment as laid down in the *Standard Oil* case has, so far as we know, never been modified. On the contrary, the principle has been reaffirmed by this court as recently as April 10, 1944.[6] In the *Bausch & Lomb* case the principle was thus stated:

> "The test is whether or not the required action reasonably tends to dissipate the restraints and prevent evasions."

Or, as phrased in *Ethyl Gasoline Corp. vs. U. S.*, 309 U. S. 436, 461 (1940), the decree shall be framed

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[4] *Appalachian Coals, Inc., vs. U. S.*, 288 U. S. 344, 377 (1933).
[5] *Truly vs. Wanzer*, 5 Howard 141, 142.
[6] *U. S. vs. Bausch & Lomb Co.*, 321 U. S. 707, 724, 726-727 (1944).

"* * * so as to suppress the unlawful practices and to take such reasonable measures as would preclude their revival."

Of course, the judgment must go far enough to be an effective one.[7] That is, it must completely "dissipate the restraints and prevent evasions."[8] And if necessary in order to accomplish this purpose, "it may enjoin acts otherwise lawful,"[8] and "doubts are to be resolved in favor of the Government."[9]

Nevertheless, all of the cited decisions recognize the principle that injunction is an extraordinary remedy, to be delicately used with great caution and deliberation, and which must go no further than is reasonably required "to suppress the unlawful practices and to take such reasonable measures as would preclude their revival."

Thus in determining in a given case the breadth of a judgment necessary to accomplish those purposes, it must be borne in mind that "one of the fundamental purposes of the statute is to protect, not to destroy, rights of property"[10] and such a judgment must evidence "a proper regard for the vast interests of private property."[11] The judgment must not be punitive in character "as penalties which are not authorized by law may not be invoked by judicial authority * * *."[10] And it must "set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail and not by reference to the bill of complaint or other documents, the act or acts

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[7] *U. S. vs. American Tobacco Co.*, 221 U. S. 106, 184 (1911); *Standard Oil Co. vs. U. S., supra; U. S. vs. Union Pacific R. R. Co.*, 226 U. S. 470 (1913); *Ethyl Gasoline Corp. vs. U. S., supra.*

[8] *U. S. vs. Univis Lens, Inc.*, 316 U. S. 241 (1942); *U. S. vs. Bausch & Lomb Co., supra*, p. 724 of opinion, and cases there cited.

[9] *Local 167 vs. U. S.*, 291 U. S. 293, 299 (1934); *Warner & Co. vs. Lilly & Co.*, 265 U. S. 526, 532 (1924); *U. S. vs. Bausch & Lomb Co., supra.*

[10] *Standard Oil Co. vs. U. S., supra*, pp. 77-78 of opinion.

[11] *United States vs. American Tobacco Co.*, 221 U. S. 106, 185 (1911).

sought to be restrained."[12] A general injunction in an anti-trust suit is intolerable because "the defendants ought to be informed as accurately as the case permits what they are forbidden to do,"[13] and because such a decree amounts to "a sweeping injunction to obey the law" and "we equally are bound by the first principles of justice not to sanction a decree so vague as to put the whole conduct of the defendant's business at the peril of a summons for contempt. We cannot issue a general injunction against all possible breaches of the law."[13] Such a general injunction "would be violative of the most elementary principles of justice."[14]

Thus *ordinarily* where acts have been found to have been done in violation of the anti-trust laws, an "adequate measure of relief would result from restraining the doing of such acts in the future."[13] "This court will strike from an injunction decree restraints upon the commission of unlawful acts which are thus disassociated *from those which a defendant has committed.*"[15]

Hence uniformly under the decisions of this court, the breadth of an order as against a particular defendant must be measured by and have some reasonable relation to the acts and practices of said defendant in furtherance of the conspiracy as shown by the findings of fact, the probability of his resumption thereof in the light of his past conduct, and the necessity of such order as to him in order to effectively dissipate the consequences of the conspiracy. This is a far different standard of measurement than the erroneous theory adopted by the Government in the framing of this judgment. See *supra*, p. 7.

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[12] 28 U. S. C. A., Sec. 383.

[13] *Swift vs. United States*, 196 U. S. 375, 401, 404 (1905).

[14] *New York, New Haven & Hartford R. R. Co. vs. Interstate Commerce Commission*, 200 U. S. 361, 404 (1906).

[15] *National Labor Relations Board vs. Express Publishing Co.*, 312 U. S. 426, 435 (1941).

The Findings of Fact show that none of these appellants have engaged in any unlawful practices or restraints, and there are no consequences of the conspiracy the dissipation of which requires that the terms or provisions of the judgment be extended to them

The application of the yardstick of these established principles to each of the terms and provisions of this judgment as they apply to these individual appellants has already been discussed in detail in the briefs heretofore filed, to which the court is respectfully referred for a full discussion thereof.[1]

Suffice it to here note that the sum total of the conduct and position of these appellants as found by the District Court, consists merely of the ownership by each of them (together with several hundred other stockholders, most of whom are non-defendants, and none of whom are defendants by reason of such stock ownership) of a nominal amount of stock of the defendant Hartford, that each is an officer and director of Anchor Hocking,[2] which was dismissed below, and that the defendant Collins was once a director of the defendant Hartford, from which position he resigned more than two years before this suit was commenced for reasons wholly disassociated therewith, and that as such director he did not authorize, order or participate in a single transaction of the defendant Hartford found by the court below to have contravened the anti-trust laws. What is there about that situation which calls for the application to any of these appellants of the drastic provisions of this judgment in order to guarantee a dissipation of the consequences of the conspiracy and the pre-

[1]Collins' main brief, pp. 49-61; Fulton, et al., main brief, pp. 28-37; joint brief upon reargument, pp. 35-36, and the various sections thereof discussing particular provisions of the judgment, pp. 55, 57-63, 77-78, 82, 85, 99-100, 113, 134-137, 139-146, 187, 198, 211 and 222.

[2]Its subsidiaries or predecessors, and as such participated in its management.

vention of a resumption thereof? For that matter, what is there about that situation which is unlawful and should be prohibited?

In so far as the necessity of suppressing past unlawful practices of these appellants is concerned, there obviously are none to be suppressed. How, then, could there be any necessity for any injunctive provisions as to them to prevent the commission by them in the future of any similar practices the commission of which "unless enjoined may fairly be anticipated from the defendant's conduct in the past"? But to enjoin these appellants against engaging in practices in which they have never engaged, merely because some other appellant has so engaged, is, as shown *supra*, in contravention of the principles enunciated by the decisions of this court, and amounts to the exercise of judicial authority merely as an instrument of punishment of them for past violations or wrongs committed by the others.

By any possibility can it be claimed that in order to "dissipate the restraints and prevent evasions" these appellants must be enjoined from ever engaging in the manufacture and distribution of glass making machinery unless all of the other defendants (over whom none of them have any control) take the action specified in the judgment, and even then only upon the same terms and conditions prescribed for the other defendants? (See paragraphs 23 and 25 of judgment.)

Particularly, what possible basis could there be for such a claim when, as the record shows, they have never in their entire lives engaged in any such business?

What is there either about their ownership of Hartford stock, the fact that they are officers or directors of Anchor Hocking, or the fact that appellant Collins once was a director of Hartford, which requires that if and when they should engage in the business of distributing glass making machinery (something none of them has ever

done), they must be enjoined from leasing or otherwise distributing such machinery other than by outright sale? (Paragraph 21 of judgment.)

What have they done, and what consequences of the conspiracy are there which can only be dissipated by requiring these appellants to issue royalty free licenses upon hypothetical, non-existing patents or patent applications which they do not now and never have owned (paragraph 24 of judgment), and by requiring them to be enjoined from enforcing any rights in these non-existent patents and patent applications? (See paragraphs 26(a) and (c) of judgment.)

What conduct of these appellants, as shown by what findings of fact, necessitates a provision in the judgment requiring them to issue licenses to all comers upon any patents upon glass making machinery which they may at any time acquire in the future in order that this conspiracy may be fully dissipated? (See paragraphs 24(b), (c) of judgment.)

What restraint have they engaged in which must be dissipated and which requires in order "to prevent evasions" that these appellants (who have never so much as issued a license under any patent) now be enjoined from granting licenses of the character described in paragraph 29 of the judgment in the event they should perchance at some future time acquire a patent?

What past act of or resulting consequence to these appellants or to the public therefrom as found by the court below makes it requisite that all future contracts between them and any of the defendants be supervised by the court? (Paragraph 31 of judgment.) Or that they be enjoined from requiring, requesting or inducing Hartford to seek their permission, advice or consent in issuing licenses? (Paragraph 32 of judgment.)

The adjudged conspiracy and monopoly is admittedly one of patents relating to and of glass making machinery, which through a system of licensing and leasing as established by those owning and controlling the same, has resulted in the incidental restraint of the manufacture and sale of glassware. And the provisions of the judgment directed at those owning and controlling the same completely disestablish such licensing and leasing system. In view of these facts, what is there about the consequences of the conspiracy which requires over and above such disestablishment that these appellants among the several hundred stockholders be singled out and compelled either to divest themselves of their small stock interest in Hartford or their substantial stock interest in the non-competitive dismissed Anchor Hocking, or that they be enjoined from acquiring assets, stocks, bonds, or even evidences of indebtedness of any other company engaged in the manufacture and sale of glassware or of glass making machinery, or from serving as an officer or director of any such company? (Paragraphs 33-36 of judgment.)

None of these appellants have been found to now have or to ever have had, nor is there any possibility or likelihood in the future that they will have any control over or power with respect to the patents or glass making machinery which the court below held constituted an unlawful monopolization and through which it found the restraints on trade to have been exercised. Neither the fact that they are stockholders, directors and officers of Anchor Hocking, held by the court below to be an innocent bystander, nor the fact that they are small stockholders of Hartford, gives them any such power or control with respect thereto, and certainly affords no reason why they should be singled out from among all of Hartford's stockholders and have their future business activities hamstrung and crippled, as the drastic provisions of this judgment would certainly do.

Whether they do or do not continue to hold their stock in Hartford or in the dismissed Anchor Hocking, or in both, obviously never has been and never can be of any consequence in so far as dissipating any restraints or neutralizing any consequences of the conspiracy is concerned. Such a provision would be justified only if it were proper to make a similar order against every stockholder of Hartford, which obviously is neither possible nor necessary.

Finally, what possible basis can there be for claiming that in order to fully "dissipate the restraints and prevent evasions," the conduct of these appellants has been such, and their resulting position from the conspiracy is such, as shown by the findings of fact, that they who have never owned, let alone misused, a patent or patent application, must nevertheless be prohibited normal patent acquisitions (paragraphs 51 and 52 of judgment) and perpetually enjoined from engaging in specified practices ordinarily used in connection with patent procedure (paragraphs 53 and 54).

The plain, obvious answer to each of these questions is that the findings of fact as to these appellants do not disclose a single past act, lawful or unlawful, nor a single consequence of the entire adjudicated conspiracy, however drastic it is determined the judgment must be as to others, which requires or justifies making a single term or provision of the judgment applicable to any of these appellants.

The real explanation for the erroneous inclusion herein of these appellants must rest in the fact that as officers and directors of Anchor Hocking they were named as defendants and charged with having violated the anti-trust laws through participation in the management and direction thereof. There is not a single allegation in the entire complaint, and until the dismissal of Anchor Hocking there never was any claim of any kind that any of these appellants had violated the anti-trust laws otherwise than

through Anchor Hocking. When Anchor Hocking was found not to have violated the anti-trust laws, no derivative liability could, of course, attach to any of these appellants, and they should have been dismissed. In order to justify the error of the court below in failing to so dismiss them, it is necessary to now claim that they became connected with the conspiracy through the mere fact of their ownership of stock of the defendant Hartford, and that such fact justifies the application of each of the drastic provisions of this entire judgment to them.

As pointed out *supra*, such a contention is demonstrably fallacious.

Conclusion

We therefore conclude, as we began the discussion of relief in our main brief and in the joint brief, by saying that the soundness of our basic position that these appellants should be dismissed is further demonstrated by a consideration of the detailed provisions of the final judgment and the complete lack of any basis in the record for the application thereof to any of them.

We respectfully submit that a judgment of dismissal should be entered as to each of these appellants.

Respectfully submitted,

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Toledo, Ohio, October 7, 1944.